

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA

-against-

BRIAN COLL,

Defendant.

-----x
NOTICE OF MOTIONS
IN LIMINE AND TO
DISMISS COUNT ONE

15 Cr. 360 (LAP)

S I R S :

PLEASE TAKE NOTICE, that upon the annexed declaration of SAM A. SCHMIDT, ESQ., and Memorandum of Law dated the 26th day of September, 2016, and all other proceedings had herein, the undersigned will move this Court at a date and time convenient to the Court, located at the United States Courthouse, 500 Pearl Street, New York, N.Y. 10007, for an Order

- (1) precluding the government's designated expert pathologist, Michael J. Greenberg, M.D., from rendering certain opinions, or, in the alternative,
 - (a) compelling the government to provide sufficient expert notice pursuant to Rule 16(a)(1)(G), Fed.R.Crim.P.; or,
 - (b) precluding Dr. Greenberg's testimony pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and Rule 702, Fed.R.Evid.; and/or,
 - (c) delaying the defense's reciprocal expert notice, pursuant to Rule 16(b)(1)(c), until the government's expert notice complies with Rule 16(a)(1)(G);
- (2) dismissing Count One, which charges a violation of 18 U.S.C. §242, Death Resulting from the Deprivation of Rights Under Color of Law, because the conclusions set forth in the government's Rule 16(a)(1)(G) expert notice fail to satisfy the elements of the offense charged;

- (3) excluding any reference to a telephone conversation – either through a recording or testimony – in which Mr. Coll allegedly told a corrections Captain that he “should get a tattoo of a teardrop on his eyelid,”;
- (4) excluding testimony with respect to out-of-court statements by inmates during the event in question – the altercation at Rikers Island December 19, 2012, that resulted in the death of inmate Ronald Spear; and,
- (5) any such other and further relief as the Court deems just and proper.

Dated: New York, New York
September 26, 2016

Respectfully submitted,

/s/

SAM A. SCHMIDT, ESQ.
JOSHUA L. DRATEL, ESQ.
Attorneys for Defendant
Brian Coll
115 Broadway Suite 1704
New York, New York 10006

To: HONORABLE LORETTA A. PRESKA
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

United States Attorney for the
Southern District of New York

Clerk of the Court

By ECF